



August 10, 1999

Mr. Monty Waters, Attorney  
Office of General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR99-2238

Dear Mr. Waters:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the “act”), chapter 552 of the Government Code. Your request was assigned ID# 126547.

The Texas Department of Health (the “department”) received a request for a variety of information concerning “the *Listeria monocytogenes* outbreak that Centers for Disease Control and Prevention (CDC) suspects may be linked to the Bil Mar plant in Zeeland, Michigan.” In response to the request, you submit to this office for review the information which you assert is responsive.<sup>1</sup> You claim that the submitted information is protected from required public disclosure by section 552.101 of the Government Code in conjunction with 81.046 of the Health and Safety Code. You also assert that the “the actual *Listeria monocytogenes* bacteria cultures . . . are not recorded in a medium as defined in §§552.002 (b) and (c) of the Texas Government Code.” We have considered the exception and arguments you raise, and have reviewed the information submitted.

We first address your assertion that the requested *Listeria monocytogenes* culture samples do not constitute public information under section 552.002 of the Government Code. You state that “[t]he requested isolates consist of the actual *Listeria monocytogenes* bacteria cultures and are stored and maintained in the TDH laboratory.” We agree that the requested *Listeria monocytogenes* bacteria culture samples are not one of the enumerated types of information subject to the act. See Gov’t Code §§ 552.002, .022. Since the requested *Listeria monocytogenes* “isolates” are not within the subject matter covered by the act, the requestor may not obtain this information under the act.

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<sup>1</sup>We assume that you will release other responsive records to the extent they exist, since you have not raised any other exceptions nor submitted other records.

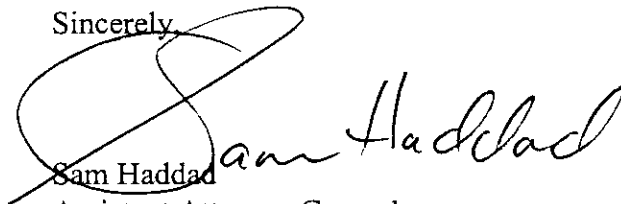
We next consider whether the submitted records contain information that may be confidential and excepted from disclosure under section 552.101, in conjunction with section 81.046 of the Health and Safety Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 81.046 provides, in part:

- (a) Reports, records, and information furnished to a health authority or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter . . . .
- (b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information . . . .

Section 81.046 of the Health and Safety Code, with exceptions that do not apply here, prohibits the release of reports, records, and information relating to cases or suspected cases of reportable diseases. This office has held that this statute is "a broad confidentiality provision applicable to information relating to reportable diseases in the possession of a county health department, whether received as reports from health professionals or prepared in connection with the department's investigation of a disease or health condition." Open Records Decision No. 577 (1990). We have reviewed the submitted records and agree that they are protected in their entirety under section 81.046 of the Health and Safety Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Haddad", is written over a printed name "Sam Haddad". The signature is fluid and cursive.

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref.: ID# 126547

encl. Submitted documents

cc: Ms. Kendra Collier  
Jenner & Block  
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Chicago, IL 60611-7602  
(w/o enclosures)